

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 283

Introduced by Assembly Member Koretz

(Coauthor: Assembly Member Maze)

~~(Coauthor: Senator Margett)~~ *Coauthors: Senators Alquist and Margett*

February 9, 2005

An act to add Section 11100.01 to the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 283, as amended, Koretz. ~~Pseudoephedrine-Ephedrine and pseudoephedrine:~~ retail sale.

(1) Under existing law, a retailer who makes an over-the-counter retail sale of *ephedrine* or pseudoephedrine is generally subject to a 3 package per transaction limitation or 9 gram per transaction limitation. Any violation of this requirement is a crime, punishable as specified.

This bill would provide that the dispensing, sale, or distribution at retail of any compound, mixture, or preparation containing any detectable quantity of *ephedrine*, pseudoephedrine, *or any derivative of ephedrine or pseudoephedrine* shall be subject to specified additional requirements. ~~The retailer would be required to store and display the product in a locked cabinet or area, as specified, and the transaction would be required to be made in a pharmacy located and currently licensed in this state and by a pharmacist or pharmacy technician who is currently licensed in this state~~ *retailer or employee of a retailer who meets specified requirements*. Before distributing or selling any product to a purchaser, ~~the pharmacist, pharmacy technician, or pharmacy clerk~~ *a retailer or the employee of a retailer* would be required to request government issued photo identification

from the purchaser and to obtain specified information to be recorded in a written transaction log or receipt. The pharmacy would be required to maintain the information for at least 3 years from the date of purchase such that the information would be readily retrievable and available to law enforcement upon request during the pharmacy's normal operating hours reported to the Department of Justice, as specified; the bill would prohibit the information obtained from being provided to any person or entity, except as specified. A violation of any of these provisions would be a misdemeanor, punishable as specified, except that a retail clerk who fails to request photo identification or obtain the required information would not be subject to any civil, criminal, or other penalty, unless the clerk is a willful participant in an ongoing criminal conspiracy to violate these provisions. By creating new crimes, this bill would impose a state-mandated local program upon local governments.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11100.01 is added to the Health and
 2 Safety Code, to read:
 3 11100.01. (a) In addition to any requirement specified in
 4 Section 11100, the dispensing, sale, or distribution at retail of any
 5 compound, mixture, preparation, or product that contains any
 6 detectable quantity of ~~pseudoephedrine~~ ephedrine,
 7 pseudoephedrine, or any derivative of ephedrine or
 8 pseudoephedrine, or any detectable quantity of any salt, optical
 9 isomer, or salt of an optical isomer of ~~pseudoephedrine~~
 10 ephedrine, pseudoephedrine, or any derivative of ephedrine or
 11 pseudoephedrine, shall be subject to the following requirements:
 12 (1) ~~The dispensing, sale, or distribution at retail of any product~~
 13 ~~specified in subdivision (a) shall be made in a pharmacy located~~
 14 ~~and currently licensed in this state.~~

1 (1) Any product specified in subdivision (a) shall be stored or
2 displayed by a retailer in a locked cabinet or locked area in such
3 a manner that the product is accessible to the public only with
4 the assistance of the retailer or employee of the retailer. The
5 retailer or employee of the retailer shall at all times act to
6 prevent the theft or diversion of the product.

7 (2) The dispensing, sale, or distribution at retail of any
8 product specified in subdivision (a) shall be made only by a
9 ~~pharmacist or pharmacy technician who is currently licensed in~~
10 ~~this state or by a pharmacy clerk under the supervision of a~~
11 ~~currently licensed pharmacist or pharmacy technician. retailer or~~
12 ~~employee of a retailer who is trained in the legal requirements~~
13 ~~set forth in this section and who shall at all times act to prevent~~
14 ~~the theft or diversion of the product and the unlawful sharing of~~
15 ~~information obtained pursuant to subdivision (b).~~

16 (b) Before distributing or selling any product specified in
17 subdivision (a) to a purchaser, a ~~pharmacist, pharmacy~~
18 ~~technician, or a pharmacy clerk~~ retailer or employee of a retailer
19 shall request government issued photo identification from the
20 purchaser and shall obtain the following information to be
21 ~~recorded in a written transaction log or receipt reported to the~~
22 ~~Department of Justice in a frequency and format specified by the~~
23 ~~Department of Justice:~~

- 24 (1) Date of purchase.
25 (2) Name and amount of product purchased.
26 (3) Government issuer of the photo identification.
27 (4) Identification number.
28 (5) Purchaser's full name ~~printed in legible form as it appears~~
29 ~~on the photo identification.~~

30 (6) Purchaser's signature.
31 ~~(e) The pharmacy shall maintain the written transaction log or~~
32 ~~receipt for at least three years from the date of purchase either in~~
33 ~~an automated data-processing or manual record mode such that~~
34 ~~the information is readily retrievable and available to law~~
35 ~~enforcement upon request during the pharmacy's normal~~
36 ~~operating hours.~~

37 (c) Information obtained pursuant to subdivision (b) shall only
38 be provided to appropriate state, local, or federal person or
39 public agency with respect to a disciplinary, civil, or criminal
40 action related to a violation of this section or to the unlawful

1 *manufacture of methamphetamine or any other controlled*
2 *substance.*

3 (d) This section shall not apply to any ~~compound, mixture, or~~
4 ~~preparation~~ *product specified in subdivision (a) in liquid, liquid*
5 *capsule, or gel capsule dissolvable strip form in which*
6 ~~pseudoephedrine is not the only active ingredient. ephedrine,~~
7 *pseudoephedrine, or any derivative of ephedrine or*
8 *pseudoephedrine is the active ingredient.*

9 (e) (1) The Department of Justice may adopt rules and
10 regulations in accordance with Chapter 3.5 (commencing with
11 Section 11340) of Part 1 of Division 3 of Title 2 of the
12 Government Code that exempt a substance from the application
13 of subdivision (a) if the department finds that the substance is not
14 used in the unlawful manufacture of methamphetamine or any
15 other controlled substance.

16 (2) The Department of Justice shall, upon satisfactory
17 application by the manufacturer of a drug product to the
18 department, exempt any product the department determines to
19 have been formulated in such a way as to effectively prevent the
20 conversion of any active ingredient in the product into
21 methamphetamine or any other controlled substance.

22 ~~(f) (1) A first violation of this section is a misdemeanor.~~

23 (f) *Except as provided in subdivision (g), any person who*
24 *violates this section shall be punished as follows:*

25 (1) *A first violation of this section is a misdemeanor.*

26 (2) Any person who has previously been convicted of a
27 violation of this section or Section 11100 shall, upon a
28 subsequent conviction thereof, be punished by imprisonment in a
29 county jail not exceeding one year, by a fine not exceeding ten
30 thousand dollars (\$10,000), or by both the fine and
31 imprisonment.

32 (g) (1) *Notwithstanding subdivision (f) and except as provided*
33 *in paragraph (2), a retail clerk who fails to request photo*
34 *identification or obtain the information specified in subdivision*
35 *(b) shall not be guilty of a crime pursuant to subdivision (f), shall*
36 *not be subject to any civil penalty, and shall not be subject to any*
37 *disciplinary action or discharge by his or her employer.*

38 (2) *This subdivision shall not apply to a retail clerk who is a*
39 *willful participant in an ongoing criminal conspiracy to violate*
40 *this section.*

1 (h) It is the intent of the Legislature that this section and
2 Section 11100 shall preempt all local ordinances or regulations
3 governing the sale by a retail distributor of over-the-counter
4 products containing pseudoephedrine.

5 SEC. 2. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the
10 penalty for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition of a
12 crime within the meaning of Section 6 of Article XIII B of the
13 California Constitution.